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May 29, 2009

Anne K. Quinlan, Acting Secretary
Surface Transportation Board
Mercury Building
395 E Street, S. W.
Washington, DC 20423-0001

225203



RE: Petition to Transfer Holder of Notice of Interim Trail Use/Trail Manager/Responsible Party Status for the Panhandle Railroad (the Former A. & R. Line Railroad); Status Granted in STB Docket No. AB-855 (Sub.-No. 1X) A. & R. Line, Inc. – Abandonment Exemption – in Cass and Pulaski Counties, Indiana

Dear Ms. Quinlan:

Enclosed please find the following pleading: An original and ten copies of a "Joint Petition of the Indiana Trails Fund, Incorporated and the Friends of the Panhandle Pathway, Incorporated for Substitution of New Holder of Interim Trail Use/Trail Manager/Responsible Party," along with a Statement of Willingness to Assume Financial Responsibility filed on behalf of the Nickel Plate Trail, Inc. A check from the Friends of the Panhandle Pathway, Inc. for the \$250 filing fee is enclosed.

Also, please consider this letter to be my initial appearance in the above captioned proceeding, as an attorney in good standing with the Indiana Supreme Court, Attorney number 14927-49, on behalf of both the Indiana Trails Fund, Inc. and the Friends of the Panhandle Pathway, Inc. The addresses of these parties are as follows:

Mr. Richard C. Vonnegut, Jr., President
Indiana Trails Fund, Inc.
P. O. Box 402
Indianapolis, IN 46206-0402

Mr. John Bawcum, President
Friends of the Panhandle Pathway, Inc.
623 West 11th Street
Winamac, IN 46996

ENTERED
Office of Proceedings

JUN - 2 2009

Part of
Public Record

Thank you for your consideration of this joint petition. Please call me if you have any questions at 317-409-9925.

Sincerely,

Timothy E. Peterson
Attorney for the Petitioners

TEP:lw

Enclosures

cc: Richard C. Vonnegut
John Bawcum
All Parties of Record
Files

Before the Surface Transportation Board

A. & R. Line, Inc. – Abandonment Exemption)	
in Cass and Pulaski Counties, Indiana)	AB-855 (Sub-No.1X)
_____)	

**Joint Petition of the Indiana Trails Fund, Incorporated and
the Friends of the Panhandle Pathway, Incorporated for Substitution of
New Holder of Interim Trail Use/Trail Manager/Responsible Party
May 29, 2009**

Pursuant to 49 C.F.R. 1152.29(f), the Indiana Trails Fund, Incorporated (ITF) and the Friends of the Panhandle Pathway, Incorporated (FPP) submit this joint petition to the Surface Transportation Board (STB) requesting that the above captioned proceedings be reopened so that the FPP may be substituted as the Holder of Interim Trail Use/Trail Manager/Responsible Party for the rail line in the above-captioned proceeding. In support of said petition the ITF and FPP set forth the following, to wit:

1. By decision and notice of interim trail use or abandonment (NITU1) served on November 18, 2003, as revised by decision served on March 5, 2004 (NITU2), the STB, under 49 U.S.C. §10502, exempted from the prior approval requirements of 49 U.S.C. § 10903 the abandonment by A. & R. Line, Inc. (A&R) (part of RailAmerica, Inc.) of a line of railroad known as the A. & R. Line. (Said NITU1 and NITU2 are attached hereto as Exhibits A & B, respectively.)
2. In a prior decision in this proceeding the STB also exempted the discontinuance of service by the Toledo, Peoria & Western Railway Corporation (TP&W) over the same line, which decision was embraced in Toledo, Peoria & Western Railway Corporation – Discontinuance of Service Exemption – in Cass and

Pulaski Counties, Indiana, STB Docket No. AB-847 (Sub-No. 2X).

3. Pursuant to these decisions the A. & R. Line and the ITF entered into an agreement to transfer ownership of the right-of-way, locally and historically known as the Panhandle Railway, to the ITF. This agreement was memorialized in a quitclaim deed executed November 29, 2005 (attached hereto as Exhibit C) which noted that the transfer was subject to the strictures of 16 U.S.C. § 1247(d), the National Trails System Act.
4. Subsequently, the ITF collaborated with trail advocates in Cass and Pulaski Counties, Indiana to form a local group, the FPP, to ultimately acquire, develop and manage the rail banked right-of-way formerly owned by the A. & R. Line.
5. Since the ITF acquired the corridor from the A. & R. Line, Inc., the A. & R. Line, Inc. was discontinued and its successor is the Toledo, Peoria & Western Railway Corporation, also a part of RailAmerica, Inc. The substitution of the FPP as the Holder of Interim Trail Use/Trail Manager/Responsible Party will not have any adverse effect upon the Toledo, Peoria & Western Railway Corporation involved in Toledo, Peoria & Western Railway Corporation – Discontinuance of Service Exemption – in Cass and Pulaski Counties, Indiana, STB Docket No. AB-847 (Sub-No. 2X), and now this Docket because the FPP has agreed to comply with all provisions of rail banking under 16 U.S.C. § 1247(d), and the ITF and FPP have obtained a letter of no objection from the Toledo, Peoria & Western Railway Corporation dated May 15, 2009 (attached hereto as Exhibit D).

6. The FPP is a duly incorporated Indiana corporation with a corporate address of:

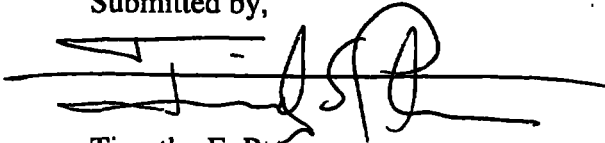
Friends of the Panhandle Pathway, Inc.
Community Development Center
623 West 11th Street
P. O. Box 153
Winamac, Indiana 46996

John Bawcum, President
Telephone 574-946-4139 x 3074, 574-946-7251 or 574-595-0819

7. Attached hereto as Exhibit E is the FPP's statement of willingness to assume financial responsibility and request for the transfer and two maps of the corridor.
8. Attached hereto as Exhibit F is the ITF's letter of support for the transfer.
9. The date for the transition of total responsibility as the new interim trail manager to the FPP is June 1, 2009.

WHEREFORE the ITF and FPP respectfully request that the Surface Transportation Board reopen the above captioned cause, vacate the existing NITU issued to the ITF, and issue an appropriate NITU to the FPP as the new Holder of Interim Trail Use/Trail Manager/Responsible Party.

Submitted by,

A handwritten signature in black ink, appearing to read 'T. Peterson', is written over a horizontal line.

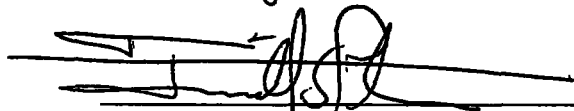
Timothy E. Peterson
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**Surface Transportation Board Docket No. AB-855 (Sub-No. 1X)
Case Title: A & R LINE, INC. - ABANDONMENT EXEMPTION -
IN CASS AND PULASKI COUNTIES, IN**

Certificate of Service

The undersigned hereby certifies that a copy of the of Joint Petition of the Indiana Trails Fund, Incorporated and the Friends of the Panhandle Pathway, Incorporated for Substitution of New Holder of Interim Trail Use/Trail Manager in Surface Transportation Board Docket No. AB-855 (Sub-No. 1X) was

mailed via first class mail on the 29th day of May, 2009 to the following list of 19 recipients.



Timothy E. Peterson, Attorney at Law

5/29/2009

Date

Recipient List

Party of Record:	Louis E. Gitomer Ball Janik LLP 1455 F Street NW Suite 225 Washington, DC 20005
Party of Record:	Larry Goode Indiana Department of Transportation 100 North Senate Avenue, Room N755 Indianapolis, IN 46204-2249
Party of Record:	Marion L. Kasten Board of Commissioners Pulaski County 112 East Main Street, Courthouse - Room 200 Winamac, IN 46996
Party of Record:	Thomas F. McFarland Thomas F. McFarland, P.C. 208 South LaSalle Street, Suite 1890 Chicago, IL 60604

Party of Record:	Richard C. Vonnegut P. O. Box 402 Indianapolis, IN 46206-0402
Non-Party:	Governor of Indiana State Capitol Indianapolis, IN 46204
Non-Party:	Indiana Department of Environmental Management Indiana Government Center- North 100 North Senate Avenue Indianapolis, IN 46204
Non-Party:	Indiana Department of Natural Resources Division of Water 402 West Washington Street Indianapolis, IN 46204
Non-Party:	Indiana Department of Transportation Railroad Section 100 N. Senate Ave., 1GCN, Room N901 Indianapolis, IN 46204
Non-Party:	Natural Resources Conservation Service U. S. Department of Agriculture 6013 Lakeside Blvd. Indianapolis, IN 46278
Non-Party:	Jon Smith Indiana Department of Natural Resources 402 W. Washington Street Indianapolis, IN 46204-2739
Non-Party:	U. S. Fish and Wildlife Service 620 S. Walker Street Bloomington, IN 47403-2101
Non-Party:	Kenneth Westlake Chief, NEPA Implementation Section U.S. Environmental Protection Agency Region 5 77 West Jackson Boulevard Chicago, IL 60604-3590
Addition to STB Service List	Cass County Commissioners Cass County Government Building 200 Court Park Logansport, IN 46947

Addition to STB Service List	R. Tod Groff, Esq. Miller, Tolbert, Muehlhausen, Muehlhausen, Groff & Damm, P.C. 216 Fourth Street Logansport, IN 46947
Addition to STB Service List	Todd Cecil, Vice President, Real Estate RailAmerica, Inc. 4040 Broadway Street, Suite 200 San Antonio, TX 78209-6300
Addition to STB Service List	Ken Charron, Vice President, Litigation Counsel RailAmerica, Inc. 7411 Fullerton Street, Suite 300 Jacksonville, FL 32256
Addition to STB Service List	Bob Bronson, Chief, Grants Section Division of Outdoor Recreation Indiana Dept. of Natural Resources 402 W. Washington St., Rm. W271 Indianapolis, IN 46204
Addition to STB Service List	Paul E. Crawford, General Manager Toledo, Peoria & Western Railway 1990 East Washington Street East Peoria, IL 61611-2961

EXHIBIT A

33963
EB

SERVICE DATE - LATE RELEASE NOVEMBER 18, 2003

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-855 (Sub-No.1X)
A & R LINE, INC.-ABANDONMENT EXEMPTION-
IN CASS AND PULASKI COUNTIES, IN

STB Docket No. AB-847 (Sub-No. 2X)

TOLEDO, PEORIA & WESTERN RAILWAY CORPORATION -
DISCONTINUANCE OF SERVICE EXEMPTION- IN
CASS AND PULASKI COUNTIES, IN

Decided: November 18, 2003

By petition filed on July 31, 2003,¹ A & R Line, Inc. (A&R) and Toledo, Peoria & Western Railway Corporation (TP&W) jointly seek an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 for A&R to abandon, and for TP&W to discontinue service over, a line of railroad known as the A&R line extending from milepost 5.1W near Kenneth to the end of the line at milepost 21.0W near Winamac, a distance of 15.9 miles in Cass and Pulaski Counties, IN. The line constitutes A&R's entire line of railroad. On August 20, 2003, The Board of Commissioners of Pulaski County, IN (County), filed comments and on August 26, 2003, the Indiana Department of Transportation (INDOT) filed a letter protest to the proposed abandonment. On September 25, 2003, A&R and TP&W replied. A late-filed request for imposition of a public use condition and issuance of a notice of interim trail use (NITU) was filed by the Indiana Trails Fund, Inc.

¹ Notice was served and published in the Federal Register on August 20, 2003 (68 FR 50214).

(ITF).² The Board will grant the exemption, subject to trail use, public use, environmental, and standard employee protective conditions as appropriate.

BACKGROUND

A&R and TP&W state that the line was formerly a main line of The Pennsylvania Railroad Company, which was transferred to the Consolidated Rail Corporation (Conrail) in 1976 as part of the Final System Plan. Conrail sold the line to the Winamac Southern Railway Company (WSRC) in 1993.³ In 1995, WSRC sold the Line to A&R,⁴ but continued to operate over the line. Cargill Incorporated (Cargill) acquired the stock in A&R from Daniel R. Frick in 1997,⁵ to ensure service to its grain elevator in Winamac at milepost 20.0W.⁶ Also in 1997, TP&W leased the line and began to operate over it.⁷ Cargill subsequently closed its grain elevator and sold A&R to RailAmerica, Inc.⁸

According to petitioners, Cargill, the only shipper on the line, has closed its grain elevator facility at Winamac, and there is no traffic on the line and no demand for service over it. TP&W

² The August 20 notice provided that any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 was due by September 9, 2003. ITF's request was filed on October 15, 2003. In revising its abandonment rules in Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting filings after the due date when good cause is shown. Because there is no indication that ITF's late-filed request will prejudice any party, it will be accepted.

³ See Winamac Southern Railway Company—Acquisition and Operation Exemption—Lines of Consolidated Rail Corporation, Finance Docket No. 32257 (ICC served Apr. 7, 1993).

⁴ See A. & R. Line, Inc.—Acquisition Exemption—Winamac Southern Railway Company, Finance Docket No. 32694 (ICC served July 6, 1995).

⁵ Mr. Frick acquired control of A&R in 1995. See Daniel R. Frick—Continuance in Control Exemption—J.K. Line, Inc., Winamac Southern Railway Company, and A. & R. Line, Inc., Finance Docket No. 32693 (ICC served July 6, 1995).

⁶ See Cargill, Incorporated—Acquisition of Control Exemption—A & R Line, Inc. and J.K. Line, Inc., STB Finance Docket No. 33458 (STB served Sept. 19, 1997).

⁷ See Toledo, Peoria & Western Railway Corporation—Lease and Operation Exemption—A & R Line, Inc., STB Finance Docket No. 33482 (STB served Oct. 16, 1997).

⁸ See RailAmerica, Inc., et al.—Control and Merger Exemption—A&R Line, Inc., and J.K. Line, Inc., STB Finance Docket No. 34269 (STB served Dec. 12, 2002).

transported 301 cars of corn for the year 2001, 60 cars for the year 2002, and, as of July 31, 2003, no cars for the year 2003. Prior to Cargill closing its facility, TP&W was providing service only on an as needed basis. The last service on the line occurred on September 16, 2002. Petitioners state that the abandonment and discontinuance of service over the line would allow them to eliminate about \$80,000 in annual maintenance costs and to sell or reuse \$525,000 worth of rail, ties and other track materials. Petitioners believe that trail use may be the best alternative use for the line, and, thus, petitioners do not intend to salvage any of the bridge structures.

INDOT opposes the use of the exemption process for this abandonment proposal. INDOT cites the movement of traffic over the line during the past 2 years. (As petitioners point out, however, they are not proceeding under the Board's class exemption for 2-year out-of-service rail lines.) In particular, in its protest INDOT alleges that petitioners provided improper notification procedures that resulted in inaccurate information in its July 10, 2003 Environmental Report (July 10 Report). INDOT indicates that petitioners stated several times in their July 10 Report that various parties had been notified by letters about the abandonment, but that petitioners received no response. INDOT states that the notification letters were mailed on July 10, 2003, and the July 10 Report was signed and mailed on that same day. Therefore, it would have been impossible for any party to have responded in time so that its comments could have been included in the July 10 Report.

Petitioners state that they have complied with the Board's regulations at 49 CFR 1105.7(b) in serving the July 10 Report on the parties on that same day. This was done to give the parties as much information as petitioners had available at that time. Petitioners also state that they were in compliance when they notified the parties in the transmittal letters that accompanied the July 10 Report that they were expecting to file their petition with the Board on July 31, 2003, and requested their comments within 3 weeks, in accord with 49 CFR 1105.11. Petitioners state that they have incorporated the comments they received into their Environmental Report dated July 31, 2003 (July 31 Report), which they attached as Exhibit B to their petition, and that they attached the responses as Exhibit 3.

INDOT also disagrees with petitioners' assumption that there is no demand for rail service over the line. INDOT states that the line provides access to a large grain elevator facility in Winamac and believes that it could be utilized for grain shipments by rail for hundreds of farmers located within the surrounding area. INDOT also challenges petitioners' carload data for the line, citing annual reports submitted to it by A&R indicating that in the year 2001, there were 418 cars of corn transported instead of 301, and in the year 2002, 463 cars were transported instead of 60. And INDOT questions the propriety of the recent sales of the line.

In response, petitioners point out that INDOT has not provided any specific evidence of future traffic, nor given an explanation of why there will be a return or growth of traffic, when there has not been any activity on the line within the past year. After the last shipment of grain, Cargill removed the

yard and track serving the facility before selling A&R to TP&W and RailAmerica, which is TP&W's corporate parent, and Cargill does not oppose the abandonment.

Regarding the traffic figures, petitioners believe that INDOT may have confused or combined the reports submitted by A&R and its affiliate railroad, J. K. Line, Inc. (JK), which operates between North Judson and Monterey, IN. In the year 2001, JK transported 761 cars of soybean and corn, and in the year 2002, JK transported 463 cars, the latter being the same volume suggested for A&R. Petitioners note that INDOT has not included any reports with its submission.

As for the propriety of the recent transactions involving the line, petitioners state that there has been no wrong-doing in the purchase or sale of the line or of A&R. These transactions were made at arm's length, did not involve affiliated entities, and were brought before the Board or its predecessor for public view. Petitioners point out that INDOT has never shown any concern about, participated in, or even opposed any of those transactions, and that INDOT has not shown an abuse of the Board's processes involving the transactions.

Finally, INDOT raises environmental concerns, including the effect of increased truck traffic and the impact on biological resources in the area. INDOT also appears to oppose trail use for the right-of-way, expressing its concern, along with that of the County, over who will eventually bear the cost of removing the bridges on the line. But, as noted, ITF has filed a request for trail use and A&R has agreed to trail use negotiations.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without the Board's prior approval. Under 49 U.S.C. 10502, however, the Board must exempt a transaction or service from regulation when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

The petitioners have established that they are incurring losses on the line, and will continue to incur losses until they are permitted to abandon it. At present the line is carrying no traffic, and the last active shipper has removed the track connecting the line to its grain elevator and does not oppose the abandonment proposal. The traffic levels in recent years do not support any prediction of significant traffic levels in the future, especially given that Cargill has ceased using rail service on this line. INDOT's assertion that there is a need for the line in the future is speculative and unsupported by any evidence.

The petitioners have complied with Board processes in pursuing their petition for exemption here. There is no evidence in this record showing abuse of the Board's processes in this or in prior STB

proceedings involving the subject line. INDOT's primary concerns appear to be preserving rail service over the line, which it can do under the Board's offer of financial assistance (OFA) procedures, and making sure that A&R removes the bridges in the absence of a trail use request, which ITF subsequently has filed. Once A&R consummates the abandonment, INDOT and the County may pursue removal of the bridges under Indiana law. Also, the Board is imposing an environmental condition that addresses bridge and culvert maintenance activities following abandonment.

In these circumstances, detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by relieving petitioners from the expense of retaining and maintaining a line that generates no traffic and allowing TP&W to apply its assets more productively elsewhere on its rail system [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the proposed abandonment and discontinuance is not necessary to protect shippers from an abuse of market power because there are no shippers on the line. Cargill, the only shipper, has closed its facility to rail service and has agreed not to oppose the abandonment and discontinuance of service. Nevertheless, to ensure that Cargill is informed of the Board's action, the Board will require A&R and TP&W to serve a copy of this decision and notice on Cargill within 5 days of the service date and certify to the Board that they have done so. In light of the market power finding, the Board need not determine whether the proposed abandonment is limited in scope.

Under 49 U.S.C. 10502(g), the Board's exemption authority may not be used to relieve a carrier of its statutory obligation to protect the interests of its employees. In STB Docket No. AB-855 (Sub-No. 1X), A&R is proposing to abandon a line that constitutes its entire rail system. When issuing abandonment authority for railroad lines that constitute the carrier's entire system, the Board does not normally impose employee protective conditions unless the evidence shows the existence of: (1) a corporate affiliate that will continue substantially similar rail operations; or (2) a corporate parent that will realize substantial financial benefits over and above relief from the burden of deficit operations by its subsidiary railroad. See Wellsville, Addison & Galeton R. Corp.-Abandonment, 354 I.C.C. 744 (1978); and Northampton and Bath R. Co.-Abandonment, 354 I.C.C. 784 (1978) (Northampton). As noted, A&R proposes to abandon its entire line. No A&R affiliate will continue these or similar rail operations, and A&R does not appear to have any corporate affiliate or parent for which the proposed abandonment could yield a benefit above relief from deficit operations. Further, no one has attempted to show that the situation under Northampton for imposing employee protection in entire line abandonments exists in this case. Under the circumstances, the Board will not impose employee protective conditions on A&R's abandonment. However, with respect to TP&W's discontinuance of service in STB Docket No. AB-847 (Sub-No. 2X), the interests of its employees will be protected by the conditions set forth in Oregon Short Line R. Co.-Abandonment-Goshen, 360 I.C.C. 91 (1979).

A&R and TP&W have submitted an environmental report with their petition and have notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed abandonment. See 49 CFR 1105.11. The Board's Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment.

SEA served an environmental assessment (EA) on September 29, 2003, recommending the imposition of three environmental conditions.

Based on the comments received on the EA, SEA recommends that the following conditions be placed on any decision granting abandonment authority: (1) prior to commencement of any salvage activities, A&R shall contact the Indiana Department of Environmental Management concerning its recommendations on water and biotic quality, air quality, potential right-of-way contamination, and any applicable environmental rules or permit requirements; and (2) prior to commencement of any salvage activities, A&R shall contact the U.S. Environmental Protection Agency, Region 5 (Kenneth A. Westlake, 312-886-2910), concerning removal and salvage methods, final disposition of cross-ties preserved with creosote, procedures for storing and fueling of construction equipment, procedures for the prevention and/or control of spills, stormwater runoff mitigation practices to be utilized during abandonment activities, and bridge and culvert maintenance activities following abandonment.

Based on the issues initially raised by the Indiana Department of Natural Resources, Division of Historic Preservation & Archaeology (SHPO), SEA recommended in the EA the imposition of an historic preservation condition pursuant to section 106 of the National Historic Preservation Act, 16 U.S.C. 470f. Following the receipt of additional comments from the SHPO, SEA has determined that the proposed abandonment will not affect historic properties listed in or eligible for inclusion in the National Register of Historic Places. Therefore, SEA has concluded that the previously recommended historic preservation condition is no longer necessary.

The conditions recommended by SEA will be imposed. Accordingly, based on SEA's recommendation, the Board concludes that the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

As previously noted, on October 15, 2003, ITF late-filed a request for issuance of a NITU under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). ITF submitted a statement of willingness to assume financial responsibility for the right-of-way, and has acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation of the right-of-way for rail service as required under 49 CFR 1152.29. On October 20, 2003, A&R stated that it was willing to negotiate for interim trail use. Because ITF's request complies with the requirements of 49 CFR

1152.29 and A&R is willing to enter into trail use negotiations, the Board will issue a NITU for the subject line. The parties may negotiate an agreement during the 180-day period prescribed below. If an agreement is executed, no further Board action is necessary. If no agreement is reached within 180 days, A&R may fully abandon the line, subject to the conditions imposed below. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

SEA has indicated in its EA that, if abandonment and salvage of the line does take place, the right-of-way may be suitable for other public use. ITF requests imposition of a 180-day public use condition to allow it to study recreational uses for the right-of-way. ITF requests that A&R be prohibited from: (1) disposing of the rail corridor, other than the tracks, ties and signal equipment, except for public use on reasonable terms; and (2) removing or destroying potential trail-related structures such as bridges, trestles, culverts and tunnels.

The Board has determined that persons who file under the Trails Act may also file for public use under 49 U.S.C. 10905. See Rail Abandonments—Use of Rights-of Way as Trails, 2 I.C.C.2d 591, 609 (1986) (Trails). When the need for both conditions is established, it is the Board's policy to impose them concurrently, subject to the execution of a trail use agreement. ITF has met the public use criteria prescribed at 49 CFR 1152.28(a)(2) by specifying: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the period of time requested. Accordingly, a 180-day public use condition will be imposed on the line to be abandoned, commencing from the effective date of this decision, to enable any State or local government agency or other interested person to negotiate the acquisition of the line for public use. If a trail use agreement is reached on a portion of the right-of-way, A&R must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, the Board notes that a public use condition is not imposed for the benefit of any one potential purchaser. Rather, it provides an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, A&R is not required to deal exclusively with ITF, but may engage in negotiations with other interested persons.

The parties should note that operation of the trail use and public use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. As stated in Trails, 2 I.C.C.2d at 608, an OFA to acquire a rail line for continued rail service or to subsidize rail operations takes priority over interim trail use/rail banking and public use. Accordingly, if an OFA is timely filed under 49 CFR 1152.27(c)(1), the effective date of this decision and notice will be postponed beyond the effective date indicated here. See 49 CFR 1152.27(e)(2). In addition, the effective date may be further postponed at later stages in the OFA process. See 49 CFR 1152.27(f). Finally, if the line is sold under the OFA procedures, the petition for abandonment exemption will be

dismissed and trail use and public use precluded. Alternatively, if a sale under the OFA procedures does not occur, the trail use and public use processes may proceed.

It is ordered:

1. Under 49 U.S.C. 10502, the Board exempts from the prior approval requirements of 49 U.S.C. 10903 the abandonment by A&R of, and the discontinuance of service by TP&W over, the above-described line subject to the following conditions: (1) TP&W's discontinuance exemption is subject to employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979); (2) A&R shall leave intact all of the right-of-way, including bridges, trestles, culverts and tunnels (except track, ties and signal equipment), for a period of 180 days from the effective date of this decision and notice to enable any State or local government agency or any other interested person to negotiate the acquisition of the line for public use; (3) A&R shall comply with the interim trail use/rail banking procedures set forth below; (4) prior to commencement of any salvage activities, A&R shall contact the Indiana Department of Environmental Management concerning its recommendations on water and biotic quality, air quality, potential right-of-way contamination, and any applicable environmental rules or permit requirements; and (5) prior to commencement of any salvage activities, A&R shall contact the U.S. Environmental Protection Agency, Region 5 (Kenneth A. Westlake, 312-886-2910), concerning removal and salvage methods, final disposition of crossties preserved with creosote, procedures for storing and fueling construction equipment, procedures for the prevention and/or control of spills, stormwater runoff mitigation practices to be utilized during abandonment activities, and bridge and culvert maintenance activities following abandonment.

2. A&R and TP&W are directed to serve a copy of this decision and notice on Cargill within 5 days after the service date of this decision and notice and to certify to the Board that they have done so.

3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.

4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

5. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and notice, interim trail use may be implemented. If no agreement is reached by that time, A&R may fully abandon the line, provided the applicable conditions imposed above are met.

7. An OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroads and the Board by November 28, 2003, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,100. See 49 CFR 1002.2(f)(25).

8. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **"Office of Proceedings, AB-OFA."**

9. Provided no OFA has been received, this exemption will be effective December 18, 2003. Petitions to stay must be filed by December 3, 2003 and petitions to reopen must be filed by December 15, 2003.

10. Pursuant to the provisions of 49 CFR 1152.29(e)(2), A&R shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by A&R's filing of a notice of consummation by November 18, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Nober.

Vernon A. Williams
Secretary

EXHIBIT B

34426

SERVICE DATE - MARCH 5, 2004

EB

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-855 (Sub-No. 1X)

**A & R LINE, INC.-ABANDONMENT EXEMPTION-
IN CASS AND PULASKI COUNTIES, IN**

STB Docket No. AB-847 (Sub-No. 2X)

**TOLEDO, PEORIA & WESTERN RAILWAY CORPORATION-DISCONTINUANCE OF
SERVICE EXEMPTION-IN CASS AND PULASKI COUNTIES, IN,**

Decided: March 3, 2004

By decision and notice of interim trail use (NITU) served on November 18, 2003, the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903, the abandonment by A & R Line, Inc. (A&R) of, and discontinuance of service by Toledo, Peoria & Western Railway Corporation (TP&W) over, a line of railroad known as the A&R line, extending from milepost 5.1W near Kenneth to the end of the line at milepost 21.0W near Winamac, a distance of 15.9 miles in Cass and Pulaski Counties, IN, subject to environmental, trail use, public use, and employee protective conditions.

On November 28, 2003, Kokomo Grain Company (Kokomo) timely filed an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27 to purchase the line for \$525,000. In a decision served on December 3, 2003, the effective date of the exemption authorizing abandonment was postponed to permit the OFA process to proceed.

In a motion filed on December 23, 2003, A&R and TP&W (jointly, petitioners) indicate that pleadings that they have filed in this proceeding incorrectly described the subject line as a 15.9-mile line of railroad. According to petitioners, the subject line is actually 21 miles long, extending from milepost 0.0W¹ at Kenneth to milepost 21.0W at Winamac. The petitioners state that they became aware of the error when analyzing the OFA filed by Kokomo. In the motion, petitioners ask that the Board permit them to amend their pleadings to correct these errors. They also request that the Board revise its decisions to reflect the correct description of the line. A decision served on December 23, 2003, held the OFA process in abeyance while the Board considered the motion. No replies were filed to the motion.

¹ Petitioners state that this milepost also has been designated as milepost 5.1W, leading the petitioners to mistakenly refer to the length of the line as 15.9 miles rather than 21 miles.

Good cause exists to grant the motion to amend. The Board's decision granting the abandonment and discontinuance exemptions is revised to correct the description of the subject line as a 21-mile rail line, extending from milepost 0.0W at Kenneth to milepost 21.0W at Winamac. The remainder of the decision, including the environmental² and standard employee protective conditions that were imposed, remains unchanged.

The Board's decision also imposed trail use and public use conditions that had been requested by the Indiana Trails Fund, Inc. (ITF) for the 15.9-mile line as originally described in the Board's decision.³ ITF may file⁴ a revised request for a public use condition and an interim trail use condition for the 21-mile line or any portion of the line by March 15, 2004.⁵

As noted, the effective date of the decision has been postponed to consider an OFA that was filed by Kokomo to purchase the 15.9-mile line as originally described in the Board's decision. The OFA process was then held in abeyance to consider the petitioners' motion. To resume the OFA process, Kokomo must submit a new OFA for the 21-mile line by March 15, 2004.⁶ If a revised OFA is not received, the Board will issue a decision setting the effective date of the abandonment exemption.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

² In a notice served and published on January 12, 2004 (69 FR 1780), the Board's Section of Environmental Analysis corrected the description of the line in the environmental assessment (EA) that it previously issued in this proceeding. SEA stated that it considered the impact that the abandonment and discontinuance would have between Kenneth and Winamac, which covered the full 21 miles of the line and that, therefore, all other information in the EA remains unchanged.

³ Petitioners indicate that they would agree to the filing of a revised trail use request for the 21-mile line.

⁴ No additional filing fee would be due if ITF refiles its request for a public use condition and interim trail use.

⁵ A request by Pulaski County that the Board require the railroad or not-for-profit interim trail user to be bonded or to escrow funds and be obligated for clean-up costs will be considered in a future decision, if appropriate, following completion of the OFA process.

⁶ No additional filing fee would be due if Kokomo refiles its OFA request.

It is ordered:

1. The Board's decision granting the abandonment and discontinuance exemptions is revised to correct the description of the subject line as a 21-mile rail line, extending from milepost 0.0W at Kenneth to milepost 21.0W at Winamac.

2. ITF may file a revised request for a public use condition and an interim trail use condition for the 21-mile line or any portion of the line by March 15, 2004.

3. Kokomo must submit a new OFA for the 21-mile line by March 15, 2004.

4. This decision is effective on its service date.

By the Board, Chairman Nober.

Vernon A. Williams
Secretary

EXHIBIT C

Duly Entered For Taxation...

Date February 13, 2006

Thomas L. Mark
Auditor, Pulaski County

200600000569
Filed for Record in
CASS COUNTY, INDIANA
KATHY ADAIR
02-06-2006 At 02:52 pm.
DEED 28.00

QUITCLAIM DEED

Instrument PG 1 OF 8
200600000569

THIS INDENTURE, made this 29th day of November, 2005 between A&R LINE, INC., an Indiana corporation ("Grantor"), and INDIANA TRAILS FUND, INC., a nonprofit corporation organized under that laws of Indiana ("Grantee"),

WHEREAS, Grantor has operated a certain line of railroad or rail transportation corridor between Kenneth and Winamac, Indiana, but such operation has recently proven unprofitable, and

WHEREAS, Grantee has requested to use said rail transportation corridor for Interim Trail Usage, under the National Trails Systems Act, 16 U.S.C. 1247(d), and grantor has agreed to a conveyance for such purposes;

NOW THEREFORE, Grantor, QUITCLAIMS to Grantee, for the sum of Ten Dollars (\$10.00) and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor's interest in certain real estate located in Cass County and Pulaski County, Indiana, which is more particularly described as follows (the "Real Estate"):

All the certain property of the A&R Line, Inc., together with all of the improvements thereon, being portions of the A&R Lines, Inc.'s lines of railroad known as Line Code 3107, situated in the Counties of Cass and Pulaski, in the State of Indiana, and described below and generally indicated on A&R Line, Inc. Case Plans (as described in Investors Title Insurance Company title policy no. O-A 007729, and also defined as the following parcels by the Records' offices of Cass and Pulaski Counties:

DULY ENTERED FOR TAXATION
SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER

February 6, 2006
Heaven Conner
AUDITOR CASS COUNTY

Page 1 of 7

Lynette Wilder
PULASKI COUNTY RECORDER
LAW Date 02/13/2006 Time 150357
FEE: 33.00
I 20060242
Page 1 of 10

CASS COUNTY:

Township #11, Jefferson:

11-07-051-017
11-07-051-018
11-07-051-019
11-07-051-020
11-07-051-021
11-07-051-022
11-07-051-023
11-07-051-024
11-07-051-025
11-07-051-026
11-07-051-027
11-07-062-021
11-07-062-022
11-07-062-023
11-07-063-015
11-07-063-016
11-07-063-017
11-07-075-015
11-07-076-016
11-07-076-023

Township #03, Boone:

03-02-003-015
03-02-010-029
03-02-015-033
03-02-015-034
03-02-015-035
03-02-023-020
03-02-023-024
03-02-024-031
03-02-025-014
03-02-025-015
03-02-025-016
03-02-025-017
03-02-025-018
03-02-036-012
03-02-036-013
03-02-036-014
03-02-036-015
03-02-036-016

PULASKI COUNTY:

Monroe Township:

010-00187-00
010-00185-00

Harrison Township:

006-00122-00
~~006-00122-00~~ 006-00123-00 RV
006-00124-00

Van Buren:

017-00138-00
017-00135-00
017-00141-00
017-00136-00
017-00128-00
017-00131-00
017-00137-00

017-00139-00
017-00133-00
017-00132-00
017-00129-00
017-00127-00
017-00140-00
017-00130-00
017-00134-00

RV Exhibit A (Cass County) + B (Pulaski)

AND MORE SPECIFICALLY DESCRIBED AS ALL THAT CERTAIN property of the Grantor, being a portion of Grantor's line of railroad known as the Penn Central Columbus – Chicago Main Line, and identified as Line Code 3107 in the Recorder's Office of Pulaski County, Indiana in Record 146 at page 616; being further described as follows:

CASS COUNTY, INDIANA, WINAMAC SECONDARY, LINE
CODE 3107

BEGINNING at the survey description: Commencing at an angle iron post located at the Northeast corner of the Northeast Quarter of Section 25, Township 27 North, Range 1 West, Jefferson Township, Cass County, Indiana; thence South 0 degrees 35'09" East along the East line of said section a distance of 1093.34 feet; thence North 84 degrees 47'09" West 711.81 feet;

(Otherwise known as Railroad Mile Post 0.1 at or near Kenneth, Indiana known as the Logansport Secondary and identified as Line Code 3107 at railroad Mile Post 76.6 (a.k.a. Railroad Mile Post 203.7 more or less)) in the Township of Jefferson, a centerline thence EXTENDING in a general northerly/northwesterly direction passing through the Townships of Noble, Jefferson and on to the County Line between and County of Cass on the south and the County of Pulaski on the north,

ENDING at (approximately Railroad Mile Post 15.8 (a.k.a. Railroad Mile Post 211.8)) a point located and described as: Commencing at a 3/4" iron rod located at the Southwest corner of the Southwest Quarter of Section 34, Township 29 North, Range 1 West, Pulaski County, Indiana; thence North 89 degrees 50'49" East along the South line of said section (centerline of County road 1000 South) a distance of 261.99 feet to a Mag nail on the centerline of the A&R Line right-of-way.

All THIS BEING a part or portion of the same premises which Consolidated Rail Corporation, a Corporation of the Commonwealth of

Pennsylvania, by Conveyance Document No. 001379 dated March 19, 1993 and recorded on

March 23, 1993, in the Recorder's Office of Cass County, Indiana, in Deed Book 259 at page 919, granted and conveyed unto Winamac Southern Railway Company.

PULASKI COUNTY, INDIANA, WINAMAC SECONDARY,
LINE CODE 3107

ALL THAT CERTAIN property of the Grantor, being a portion of Grantor's line of railroad known as the Penn Central Columbus – Chicago Main Line, and identified as Line Code 3107 in the Recorder's Office of Pulaski County, Indiana in Record 146 at page 616; being further described as follows:

BEGINNING from the County Line, between the County of Cass on the south and the County of Pulaski on the north, being at the survey description of: Commencing at a ¾" iron rod located at the Southwest corner of the Southwest Quarter of Section 34, Township 29 North, Range 1 West, Pulaski County, Indiana; thence North 89 degrees 50'49" East along the South line of said section (centerline of County road 1000 South) a distance of 261.99 feet to a Mag nail on the centerline of the A&R Line right-of-way (also known as approximately Railroad Mile Post 15.8 (a.k.a. Railroad Mile Post 211.8)):

And a centerline EXTENDING in a general northwesterly direction passing through the Townships of Van Buren and Harrison to: the place of ENDING, a survey point as described as: Commencing at a railroad spike at the Northwest corner of Section 24, Township 30 North, Range 2 West, Monroe Township, Pulaski County, Indiana; thence South 89 degrees 48'32" East along the North line of said section a distance of 989.16 feet to the centerline of the A&R Line right-of-way; thence South 33 degrees 42'09" East, 1559.17 feet along said centerline to a 5/8" iron rod (also known as approximately railroad Mile Post 21.0 (a.k.a. railroad Mile Post 217.0)) in the Township of

Monroe.

ALSO: See attached Exhibits "1" and "2" for exceptions which are made a part hereof. All of this BEING a part or portion of the same premises which Consolidated Rail Corporation, a Corporation of the Commonwealth of Pennsylvania, by Conveyance Document No. 009898 dated March 19, 1993 and recorded on April 5, 1993, in the Recorder's Office of Pulaski County, Indiana, in Deed Book Record 146 at page 616, granted and conveyed unto Winamac Southern Railway Company.

By acceptance of this Quitclaim Deed, Grantee hereby acknowledges and agrees that Real Estate is being delivered by Grantor pursuant to this Quitclaim Deed in its "AS IS WHERE IS" condition "WITH ALL FAULTS" and WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, including but not limited to any representation of warranty concerning the physical or environmental condition of the Real Estate or any improvement thereon or any right to ingress or egress to any from the Real Estate. By acceptance of this Quitclaim Deed, Grantee hereby waives any and all rights against Grantor with respect to the Real Estate which may arise under the Indiana Responsible Property Transfer Law (Ind. Code 13-25-3-1 et seq.).

This Deed is made pursuant to Section 8(d) of the National Trails System Act, 16 U.S.C. Section 1247(d), and subject to the Trail Use Conditions imposed by the U.S. Surface Transportation Board in STB Docket No. AB-855 (Sub-No. IX). Grantee assumes all financial, managerial and legal responsibility and liability for use of the premises, and agrees to defend, indemnify and hold Grantor harmless therefore. It is agreed and understood that any conservation/recreation use by Grantee shall not impair any future restoration of rail service pursuant to the National Trails System Act.

In the event the Surface Transportation Board ("STB"), or any other entity of the United States government compels Grantor, its successors or assigns, to reactivate rail service on the properties included herein ("Line") or a portion thereof, or in the event Grantor, its successors or assigns, voluntarily takes steps to reactivate rail service on the Line or a portion thereof by seeking to vacate the Notice

of Interim Trail Use (the "NITU"), and if the STB approves the vacation of the NITU and reactivation of rail service requiring conveyance of the Line or a portion thereof by the Grantee to the Grantor, then, in such event, Grantor, its successors or assigns, shall pay to the Grantee at the time of the reactivation a sum equivalent to the fair market value as mutually determined by the parties at the time of reactivation or, failing agreement, by an appraiser selected by both parties. In the event that rail service is reactivated and reimbursement is required by Grantor as set out herein by or on behalf of Grantee, Grantee shall re-convey the Line or a portion thereof together with all improvements located thereon to Grantor.

In the event a party other than Grantor, its successors or assigns, seeks to reactivate rail service by petitioning the STB to vacate the NITU, and the STB in consideration of its decision to reactivate requires a letter of concurrence to be provided by Grantor, its successors or assigns, supporting the vacation of the NITU and reactivation of rail service by such third party, then Grantor, its successors or assigns, covenants and agrees that it shall withhold such letter of concurrence until it has received a letter from the Grantee stating the Grantee's support for reactivation of rail service and vacation of the NITU, and that the Grantee has reached a satisfactory agreement with such third party petitioning for reactivation of rail service for the depreciated value of trail related improvements and compensation for transfer and conveyance of the Line, provided that such compensation shall not be greater than the fair market value of the Line at that time.

IN WITNESS WHEREOF, Grantor has executed this Quitclaim Deed this the 29th day of November 2005.

A. & R. LINE, INC. an Indiana
Corporation

By: 

Printed: Todd N. Cecil

Title: Vice President

STATE OF TEXAS)
)
COUNTY OF BEXAR) SS:

Before me, a Notary Public in and for said County and State, personally appeared Todd N. Cecil on behalf of A. & R. Line, Inc., who acknowledged the execution of the foregoing Quitclaim Deed, and who, having been duly sworn, stated that any representations therein contained are true.

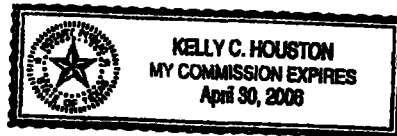
Witness my hand and notarial seal this the 29 day of November, 2005.

My Commission Expires:
April 30, 2006

County of Residence:
Bexar County, TX

Kelly C. Houston
(Signature)

Kelly C Houston
(Printed name)



Send tax statements to and
Grantee's mailing address is:

Richard Vonnegut
INDIANA TRAILS FUND
P. O. Box 402
Indianapolis, IN 46206-0402

This instrument was prepared by Timothy E. Peterson, Attorney at Law, 309 W. Washington Street, Suite 233, Indianapolis, IN 46204, (317) 634-8238, <timothy@timericpete.com>

Exhibit "1"

That part of the Northwest Quarter of Section 24, Township 30 North, Range 2 West in Monroe Township, Pulaski County, Indiana, described by: Commencing at an iron pipe at the Northeast corner of the Northwest Quarter of said Section 24; thence South 00 deg 00 min 00 sec East (assumed) along the quarter section line, a distance of 2483.62 feet to the East right-of-way line of the abandoned railroad (A & R Line, Inc.); thence North 33 deg 51 min 40 sec West along said line, a distance of 1130.84 feet to an iron pipe and the POINT OF BEGINNING; thence South 56 deg 08 min 11 sec West, a distance of 100.00 feet to an iron pipe on the West right-of-way line of said railroad; thence North 33 deg 51 min 49 sec West along said line, a distance of 1152.51 feet to a corner post; thence South 89 deg 53 min 00 sec East, a distance of 120.59 feet to an iron pipe on the East right-of-way line of said railroad; thence South 33 deg 51 min 49 sec East along said line, a distance of 1085.11 feet to the POINT OF BEGINNING; said described tract containing 2.568 acres, more or less.

Exhibit "2"

That part of the Northwest Quarter of Section 24, Township 30 North, Range 2 West in Monroe Township, Pulaski County, Indiana described by :

Commencing at the iron pipe at the Northeast Corner of the Northwest Quarter of said Section 24; thence South 00 deg 00 min 00 sec East (S 00°00'00" E) (assumed) along the section line, a distance of 2483.62 feet to a point on the East right-of-way line of the abandoned railroad (A & R Line Inc.); thence North 33 deg 51 min 49 sec West (N 33°51'49" W) along said line, a distance of 2215.95 feet to a half inch iron pipe and the POINT OF BEGINNING;

thence North 89 deg 53 min 00 sec West (N 89°53'00" W), a distance of 120.59 feet to a corner post on the West right-of-way line of said railroad; thence North 33 deg 51 min 49 sec West (N33°51'49" W) along said line, a distance of 665.55 feet to a half inch iron pipe; thence North 56 deg 08 min 11 sec East (N 56° 08'11" E), a distance of 100.00 feet to a half inch iron pipe on the East right-of-way of said railroad; thence South 33 deg 51 min 49 sec East (S 33°51'49" E) along said line, a distance of 732.94 feet to the POINT OF BEGINNING; said tract containing 1.605 acres more or less.

Prescribed by the
State Board of Accounts
(2005)

County Form 170

Declaration

This form is to be signed by the preparer of a document and recorded with each document in accordance with IC 36-2-7.5-5(a).

I, the undersigned preparer of the attached document, in accordance with IC 36-2-7.5, do hereby affirm under the penalties of perjury:

1. I have reviewed the attached document for the purpose of identifying and, to the extent permitted by law, redacting all Social Security numbers;
2. I have redacted, to the extent permitted by law, each Social Security number in the attached document.

I, the undersigned, affirm under the penalties of perjury, that the foregoing declarations are true.


Signature of Declarant


Printed Name of Declarant

6 Feb 2006



EXHIBIT D
TOLEDO, PEORIA & WESTERN RAILWAY

1990 East Washington Street • East Peoria, IL • 61611-2961 • Phone 309 698 2600 • Fax 309 698 2679

May 15, 2009

Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20434

Re: Petition to Transfer Holder of Notice of Interim Trail Use/Trail
Manager/Responsible Party Status for the Panhandle Railroad (the Former
A. & R. Line Railroad); Status Granted in STB Docket No. AB-855 (Sub.-No.
1X) A. & R. Line, Inc. – Abandonment Exemption – in Cass and Pulaski
Counties, Indiana

Dear Acting Secretary Quinlan:

This letter serves to notify you that the Toledo, Peoria & Western Railway Corp. has no objection to and, therefore, supports the transfer of Trail Manager status from the Indiana Trails Fund to the Friends of the Panhandle Pathway.

If you have any questions, please contact Ken Charron, c/o RailAmerica, Inc., 7411 Fullerton St., Jacksonville, FL 32256, (904) 538-6342.

Sincerely,

Paul E. Crawford
General Manager



EXHIBIT E

623 W. 11th Street
P.O. Box 153
Winamac, Indiana 46996

May 29, 2009

Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S. W.
Washington, D.C. 20423-0001

RE: Petition to Transfer Holder of Notice of Interim Trail Use/Trail Manager/Responsible Party Status for the Panhandle Railroad (the Former A. & R. Line Railroad); Status Granted in STB Docket No. AB-855 (Sub.-No. 1X) A. & R. Line, Inc. – Abandonment Exemption – in Cass and Pulaski Counties, Indiana

Dear Ms. Quinlan:

This request is filed on behalf of the Friends of the Panhandle Pathway, Incorporated ("proponent" or "FPP"), which is an Indiana not-for-profit corporation interested in developing the former right-of-way known as the A & R Line (which was once known as the Panhandle Railway), to promote walking, bicycling, and other outdoor activities. Said right-of-way in Docket No. AB-855 (Sub-No. 1X), was by decision and notice of interim trail use or abandonment ("NITU") granted to the Indiana Trails Fund, Inc. ("ITF") preserved for rail banking/interim trail use, and for public use subject to environmental and employee protective conditions, and conditions requested by the ITF under the National Trails System Act, 16 U.S.C. § 1247(d). Said exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 related to the petition for abandonment of the Panhandle Railway owned by the A. & R. Line, Inc. ("A&R") (now part of RailAmerica, Inc.) (STB Docket No. AB-855 (Sub-No. 1X)) and discontinuance of operation by the Toledo, Peoria & Western Railway Corporation ("TP&W") (STB Docket No. AB-847 (Sub.-No. 2X)) in Cass and Pulaski Counties, Indiana. The NITU was issued for the right-of-way between Milepost 0.0 W at Kenneth, in Cass County, Indiana to the end of the line at Milepost 21.0 at Winamac, in Pulaski County, Indiana, a distance of 21.0 miles.

Proponent requests that the two Notices of Interim Trail Use ("NITU1" and as modified "NITU2") issued to the Indiana Trails Fund, Incorporated, service dates November 18, 2003 and March 5, 2004, respectively, and decision terminating the Offer of Financial Assistance process on April 22, 2004, for the right-of-way subject to the above docketed proceeding be transferred to the proponent as the new Holder of Interim Trail Use/Trail Manager/Responsible Party for management of the right-of-way rail banked pursuant to the National Trails System Act by the ITF.

The original purpose of the Indiana Trails Fund being named as holder of the Notice of Interim Trail Use ("NITU") for Docket AB-855 (Sub-No. 1X) was both to secure the corridor land for a future rail function, and to preserve it for a trail in the interim. The intent was for a local group to develop and build a trail on the rail banked corridor, thus the role of ITF was meant to be temporary until a local trail group emerged. The Friends of the Panhandle Pathway, Inc. has now grown into this function, such that it will be able to provide permanent long term stewardship and management to what we call the Panhandle Pathway. ITF is preparing to transfer its interest in the line by quitclaim deed to the FPP soon, and the FPP is planning to construct a trail on the line this year with state and federal funds which have been granted to the FPP for the acquisition and development.

In support of such request, the proponent sets forth the following statement:

STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY:

In order to establish interim trail use and rail banking under section 8(d) of the National Trails System Act, 16

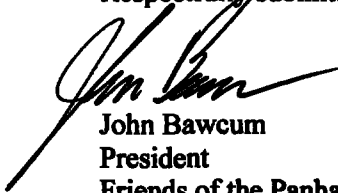
U.S.C. § 1247(d) and 49 CFR § 1152.29, the Friends of the Panhandle Pathway, Incorporated is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned by the Indiana Trails Fund, Inc. and formerly owned by the A. & R. Line, Inc and formerly operated by the Toledo, Peoria & Western Railway Corporation.

The property, known as the A. & R. Line, extends from railroad milepost 0.0 near Kenneth, to railroad milepost 21.0 near Winamac, a distance of 21 miles in Cass and Pulaski Counties, Indiana. The right-of-way is part of a line of railroad proposed for abandonment but now under decision of interim trail use in STB Docket No. AB-855 (Sub-No. 1X). Two maps of the property depicting the right-of-way are attached.

The Friends of the Panhandle Pathway, Incorporated acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service.

A copy of this statement is being served on the railroad on the same date it is being served on the Board. By my signature below, I certify service upon (1) Mr. Louis E. Gitomer (attorney for the A. & R. Line), Ball Janik, LLP., 1455 F. Street, N.W., Suite 225, Washington, D.C. 20005, (2) Mr. Ken Charron, Vice President, Litigation Counsel, RailAmerica, Inc., 7411 Fullerton Street, Suite 300, Jacksonville, Florida 32256, (3) Todd N. Cecil, Vice President, Real Estate, RailAmerica, Inc., 4040 Broadway Street, Suite 200, San Antonio, Texas 78209-6300, and Mr. Timothy E. Peterson, Attorney at Law, Indiana Trails Fund, Inc., 5126 South Harlan Street, Indianapolis, Indiana 46227, by U.S. Mail, postage pre-paid, first class or Federal Express. In addition to ten duplicates for the STB, I am enclosing one more, for which I request time and date stamp, to be returned in the enclosed envelope. In accord with 49 CFR 1002.2, enclosed please find a check from the Friends of the Panhandle Pathway, Inc. to "Secretary, Surface Transportation Board" in the amount of two hundred fifty U.S. dollars (\$250.00) required as the filing fee. I understand this fee is not refundable.

Respectfully submitted,



John Bawcum
President
Friends of the Panhandle Pathway, Incorporated

Enc: 2 Maps: 1 of corridor, 1 of Indiana area
10 duplicates for STB
1 duplicate with envelope to be date stamped and returned
Joint Petition from the ITF and FPP for Substitution of New Holder of Interim
Trail Use
\$250 check for filing fee

cc: Louis E. Gitomer, Ball Janik, LLP, Attorney for the A. & R. Line, Inc.
Ken Charron, Vice President, Litigation Counsel, RailAmerica, Inc.
Todd N. Cecil, Vice President, Real Estate, RailAmerica, Inc.
Timothy E. Peterson, Attorney, Indiana Trails Fund, Inc.

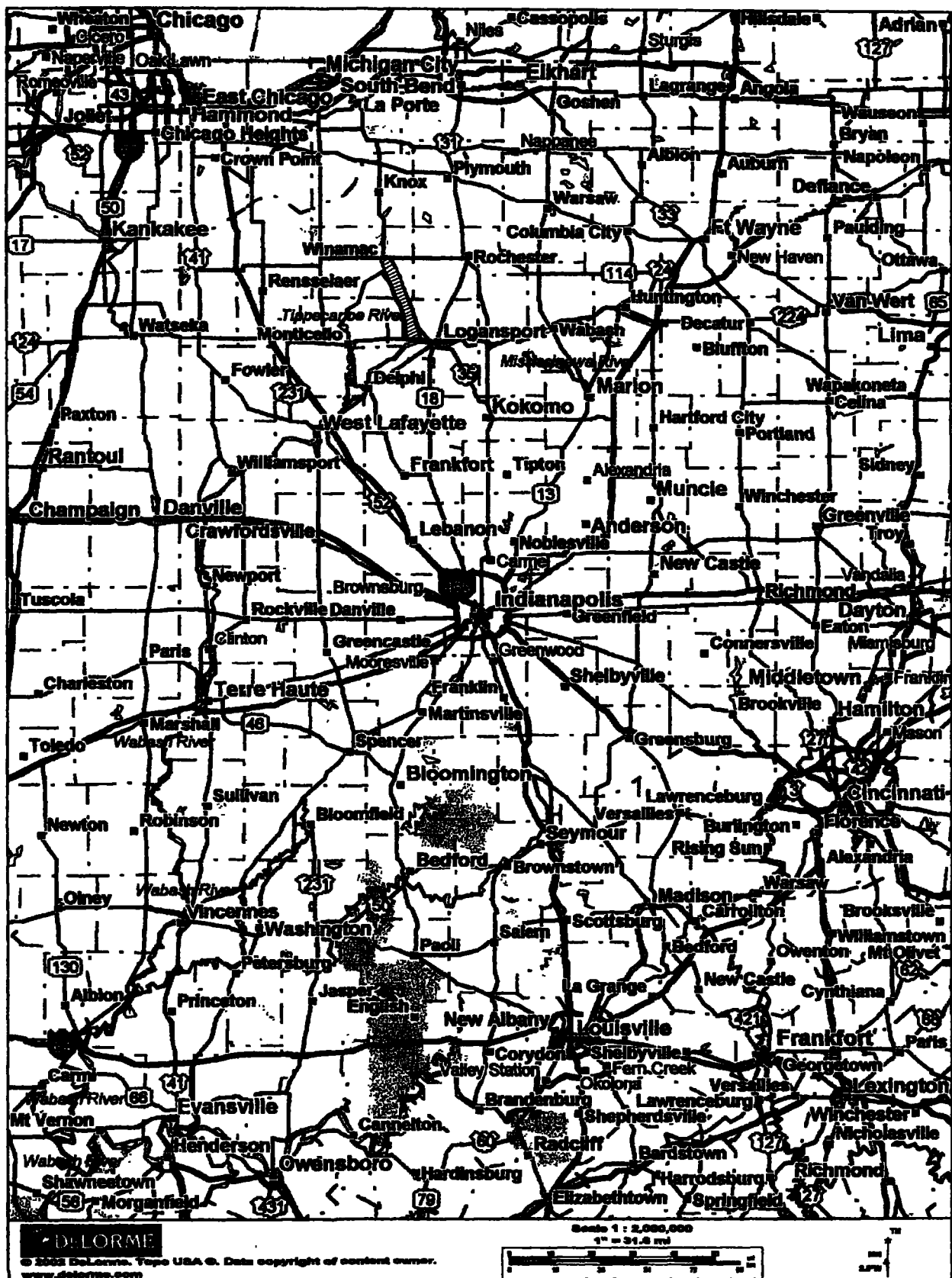



EXHIBIT E Map of Area

 Patterned with stripes is the 21 Mile Panhandle Pathway on the former A. & R. Line, Inc. from Kenneth (west of Logansport) in Cass County to Winamac in Pulaski County, in North Central Indiana, in Surface Transportation Board Docket No. AB-855 (Sub-No. 1X) A & R Line, Inc. - Abandonment Exemption - in Cass and Pulaski Counties, Indiana. This map submitted with the May 2009 petition to transfer the Holder of Interim Trail Use/Trail Manager/Responsible Party from the Indiana Trails Fund, Inc. to the Friends of the Panhandle, Inc.

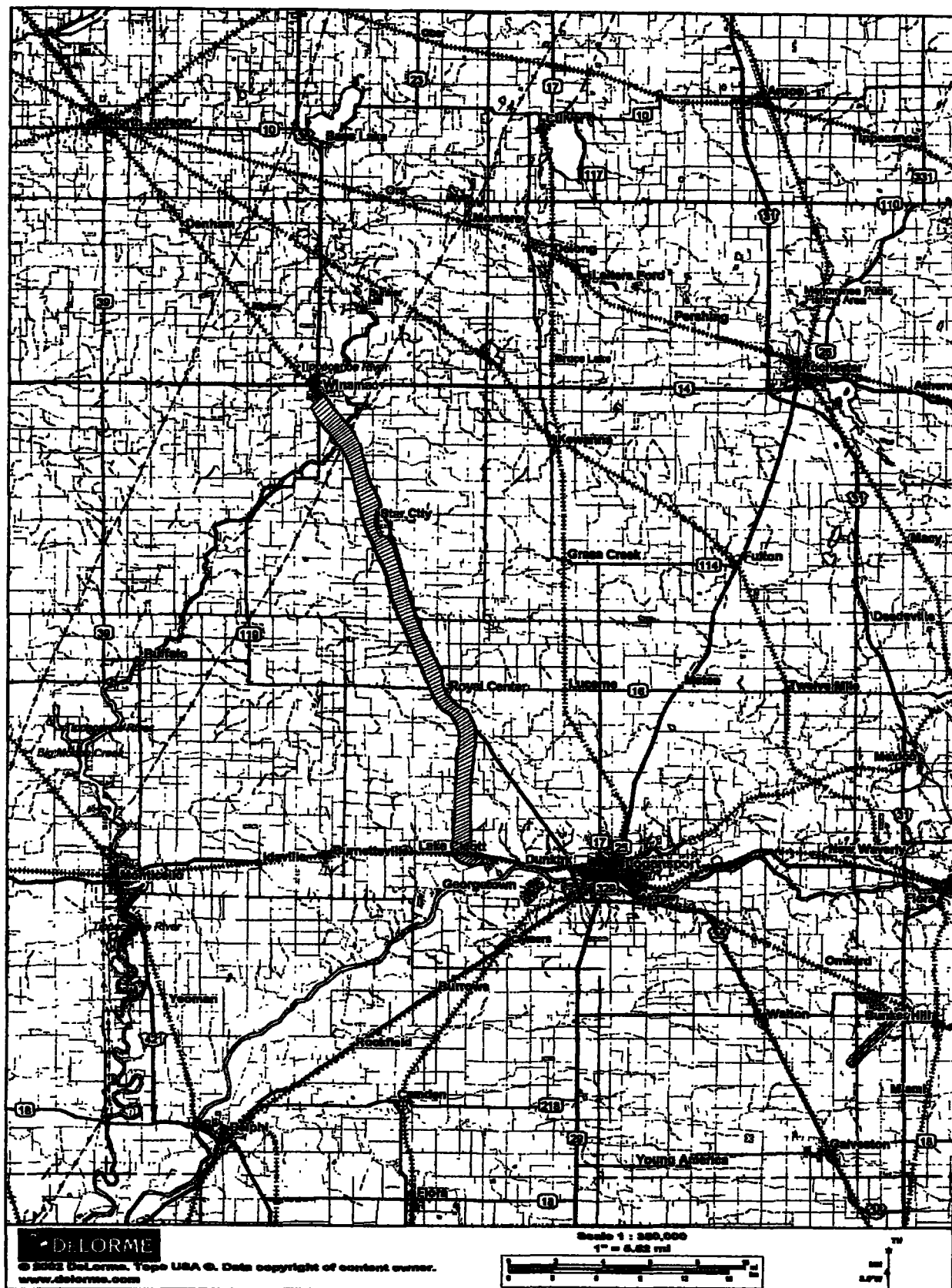


EXHIBIT E Map of Corridor


 Patterned with stripes is the 21 Mile Panhandle Pathway on the former A. & R. Line, Inc. from Kenneth (west of Logansport) in Cass County to Winamac in Pulaski County, in North Central Indiana, in Surface Transportation Board Docket No. AB-855 (Sub-No. 1X) A & R Line, Inc. - Abandonment Exemption - in Cass and Pulaski Counties, Indiana. This map submitted with the May 2009 petition to transfer the Holder of Interim Trail Use/Trail Manager/Responsible Party from the Indiana Trails Fund, Inc. to the Friends of the Panhandle, Inc.

EXHIBIT F

ITF

Protection
Preservation
Enhancement

Indiana Trails Fund, Inc.

P. O. Box 402, Indianapolis, Indiana 46206-0402 317-237-9348

May 20, 2009

Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S. W.
Washington D.C. 20423-0001

Re: A & R Line, Inc. (now the Toledo, Peoria & Western Railway, part of RailAmerica, Inc.)
Interim Trail Use, STB Docket No. AB-855 (Sub.-No. 1X) A. & R. Line, Inc. – Abandonment
Exemption – in Cass and Pulaski Counties, Indiana

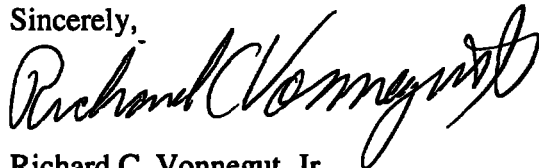
Dear Ms. Quinlan:

The Indiana Trails Fund, Inc. understands that the Friends of the Panhandle Pathway, Inc. is formally requesting that the Surface Transportation Board transfer the Interim Trail Use ("ITU") in the above referenced caption from the Indiana Trails Fund to the Friends of the Panhandle Pathway.

We concur with this request for transferring the "ITU." The Indiana Trails Fund board voted to approve concurrence with this request at its meeting on February 5, 2009 and to join in a petition to the Surface Transportation Board with the Friends of the Panhandle Pathway to transfer our "ITU" to them.

We have taken actions to secure and preserve the corridor during our tenure in holding the "ITU." We now feel the time is right for this local not-for-profit organization to receive the "ITU" and develop the corridor into the Panhandle Pathway for public trail use.

Sincerely,



Richard C. Vonnegut, Jr.
President